

Federal Emergency Management Agency



A GUIDE TO THE DISASTER DECLARATION PROCESS AND FEDERAL DISASTER ASSISTANCE

Local and State governments share the responsibility for protecting their citizens from disasters, and for helping them to recover when a disaster strikes. In some cases, a disaster is beyond the capabilities of the State and local government to respond.

In 1988, the Robert T. Stafford *Disaster Relief and Emergency Assistance Act*, 42 U.S.C. §§ 5121-5204c, was enacted to support State and local governments and their citizens when disasters overwhelm them. This law, as amended, establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available from the Federal government, and sets the conditions for obtaining that assistance. The Federal Emergency Management Agency (FEMA) is tasked with coordinating the response.

This paper explains the declaration process and provides an overview of the assistance available.

— THE DECLARATION PROCESS —

The Stafford Act (§401) requires that: “All requests for a declaration by the President that a major disaster exists shall be made by the Governor [chief executive] of the affected State.” A State also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The Marshall Islands and Micronesia are also eligible to request a declaration and receive assistance.

The Governor’s request is made through the regional FEMA office. State and Federal officials conduct a preliminary damage assessment (PDA) to estimate the extent of the disaster and its impact on individuals and public facilities. This information is included in the Governor’s request to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the local governments and that Federal assistance is necessary. Normally, the PDA is completed prior to the submission of the Governor’s request. However, when

an obviously severe or catastrophic event occurs, the Governor’s request may be submitted prior to the PDA. Nonetheless, the Governor must still make the request.

As part of the request, the Governor must note that the State’s emergency plan has been implemented. The Governor shall furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the results of the disaster. The Governor will need to certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements.

Based on the Governor’s request, the President may declare that a major disaster or emergency exists, thus activating an array of Federal programs to assist in the response and recovery effort.

— ASSISTANCE AVAILABLE —

Not all programs, however, are activated for every disaster. The determination of which programs are activated is based on the needs found during damage assessment and any subsequent information that may be discovered.

FEMA disaster assistance falls into three general categories:

- **Individual Assistance** — aid to individuals, families and business owners;
- **Public Assistance** — aid to public (and certain private non-profit) entities for certain emergency services and the repair or replacement of disaster-damaged public facilities;
- **Hazard Mitigation Assistance** — funding for measures designed to reduce future losses to public and private property.
- Some declarations will provide only individual assistance or only public assistance. Hazard mitigation opportunities are assessed in most situations.

A summary of each of these programs follows. Because program complexities require lengthy explanations, the discussion that follows is simply an overview.

INDIVIDUAL ASSISTANCE

Individual Assistance programs are oriented to individuals and families. Programs range from grants to loans to counseling services. In every case, the disaster victim must register for assistance and establish eligibility. The toll-free telephone registration number is 1-800-462-9029 (or TTY 1-800-462-7585 for the hearing or speech impaired). FEMA (or the providing agency) will verify eligibility and need before assistance is offered. Individual Assistance includes the following programs.

Disaster Housing Assistance

The Disaster Housing Assistance program assures that people whose homes are damaged by disaster have a safe place to live. Disaster Housing Assistance includes: essential home repair, rental assistance, mortgage and rental assistance, transient accommodations, and referral to other housing programs. These programs are designed to provide funds for expenses that are not covered by insurance. They are available only to homeowners and renters who are United States citizens or qualified aliens and who were displaced by the disaster.

- **Essential home repair** provides a check to help repair a home to a habitable condition. The amount of the check is based on structural damage, as determined by a FEMA inspection.
- **Rental assistance** provides a check to rent a place for the pre-disaster household to live. The amount of the check is based on established fair market rent in the area. (In rare instances, the State may provide a mobile home, travel trailer, or readily fabricated dwelling in place of Rental Assistance.)
- **Mortgage and rental assistance (MRA)** provides a check to pay the rent or mortgage to prevent eviction or foreclosure. To be eligible, the applicant must be living in the same house before and after the disaster and prove occupancy. The applicant must have a documented disaster-related financial hardship (lost employment or business income) which can be confirmed by FEMA, must be unable to make their housing payment due to the disaster, *and* must have received formal written notice that foreclosure or eviction proceedings have been initiated.
- **Referral** to other government housing programs may also be provided, if necessary. This may include residence in government-owned housing or financial assistance from specialized programs. Additional conditions of eligibility may apply.

Individual and Family Grants.

The Individual and Family Grant (IFG) program is authorized by §411 of the Stafford Act and provides funds for the necessary expenses and serious needs of disaster victims, which cannot be met through insurance or other forms of disaster assistance (including low interest loans from the Small Business Administration). The maximum amount of each grant is annually adjusted to reflect changes in the Consumer Price Index. For fiscal year 2001, each individual or family may receive up to \$14,400 through the IFG program; however, the average grant tends to be in the \$2,000 to \$4,000 range.

Among the needs that can be met through the IFG are housing, personal property, medical, dental, funeral, transportation and required flood insurance premiums. To obtain assistance, applicants may be required to apply to the U.S. Small Business Administration (SBA) for a disaster loan. If the SBA determines the applicant ineligible for a loan, or if the loan amount is insufficient, the applicant is referred to the IFG program. The State administers the program and pays 25 percent of the grant

amount; the Federal government provides the remaining 75 percent. The Governor may request a loan for the State's share.

IFG recipients who live in Special Flood Hazard Areas and receive assistance as the result of flood damages to their home and/or personal property will be provided flood insurance coverage for 37 months under a National Flood Insurance Program (NFIP) group flood insurance policy. The 37-month coverage is at no cost to the grantee and includes a \$200 deductible applicable separately to real property (structure) and personal property (contents). This flood insurance must be kept active forever on property that is owned, or for long as renters live in the flood-damaged rental unit, if those individuals are to receive Federal assistance for any future flood-related losses to insurable real and/or personal property.

Small Business Administration Disaster Loans

The U.S. Small Business Administration (SBA) can make federally subsidized loans to repair or replace homes, personal property or businesses that sustained damages not covered by insurance. The Small Business Administration can provide three types of disaster loans to qualified homeowners and businesses:

- (1) **home disaster loans** to homeowners and renters to repair or replace disaster-related damages to home or personal property,
- (2) **business physical disaster loans** to business owners to repair or replace disaster-damaged property, including inventory, and supplies; and
- (3) **economic injury disaster loans**, which provide capital to small businesses and to small agricultural cooperatives to assist them through the disaster recovery period.

For many individuals the SBA disaster loan program is the primary form of disaster assistance.

Disaster Unemployment Assistance

The Disaster Unemployment Assistance (DUA) program provides unemployment benefits and re-employment services to individuals who have become unemployed because of major disasters. Benefits begin with the date the individual was unemployed due to the disaster incident and can extend up to 26 weeks after the Presidential declaration date. These benefits are made available to individuals not covered by other unemployment compensation programs, such as self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarters to qualify for other

unemployment compensation.

All unemployed individuals must register with the State's employment services office before they can receive DUA benefits. However, although most States have a provision that an individual must be able and available to accept employment opportunities comparable to the employment the individual held before the disaster, not all States require an individual to search for work.

Legal Services

When the President declares a disaster, FEMA, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal assistance to disaster victims. Legal advice is limited to cases that will not produce a fee (i.e., these attorneys work without payment). Cases that may generate a fee are turned over to the local lawyer referral service.

The assistance that participating lawyers provide typically includes:

- Assistance with insurance claims (life, medical, property, etc.)
- Counseling on landlord/tenant problems
- Assisting in consumer protection matters, remedies, and procedures
- Replacement of wills and other important legal documents destroyed in a major disaster

Disaster legal services are provided to low-income individuals who, prior to or because of the disaster, are unable to secure legal services adequate to meet their needs as a consequence of a major disaster.

Special Tax Considerations

Taxpayers who have sustained a casualty loss from a declared disaster may deduct that loss on the federal income tax return for the year in which the casualty actually occurred, or elect to deduct the loss on the tax return for the preceding tax year. In order to deduct a casualty loss, the amount of the loss must exceed 10 percent of the adjusted gross income for the tax year by at least \$100. If the loss was sustained from a federally declared disaster, the taxpayer may choose which of those two tax years provides the better tax advantage.

The Internal Revenue Service (IRS) can expedite refunds due to taxpayers in a federally declared disaster area. An expedited refund can be a relatively quick source of cash, does not need to be repaid, and does not need an Individual Assistance declaration. It is available

to any taxpayer in a federally declared disaster area.

Crisis Counseling

The Crisis Counseling Assistance and Training Program (CCP), authorized by §416 of the Stafford Act, is designed to provide supplemental funding to States for short-term crisis counseling services to people affected in Presidentially declared disasters. There are two separate portions of the CCP that can be funded: immediate services and regular services. A State may request either or both types of funding.

The **immediate services** program is intended to enable the State or local agency to respond to the immediate mental health needs with screening, diagnostic, and counseling techniques, as well as outreach services such as public information and community networking.

The **regular services** program is designed to provide up to nine months of crisis counseling, community outreach, and consultation and education services to people affected by a Presidentially declared disaster. Funding for this program is separate from the immediate services grant.

To be eligible for crisis counseling services funded by this program, the person must be a resident of the designated area or must have been located in the area at the time the disaster occurred. The person must also have a mental health problem which was caused by or aggravated by the disaster or its aftermath, or he or she must benefit from services provided by the program.

PUBLIC ASSISTANCE

Public Assistance, oriented to public entities, can fund the repair, restoration, reconstruction, or replacement of a public facility or infrastructure, which is damaged or destroyed by a disaster.

Eligible applicants include State governments, local governments and any other political subdivision of the State, Native American tribes and Alaska Native Villages. Certain private nonprofit (PNP) organizations may also receive assistance. Eligible PNPs include educational, utility, irrigation, emergency, medical, rehabilitation, and temporary or permanent custodial care facilities (including those for the aged and disabled), and other PNP facilities that provide essential services of a governmental nature to the general public. PNPs that provide "critical services" (power, water--including water provided by an irrigation organization or facility, sewer, wastewater treatment, communications and emergency medical care) may apply directly to FEMA

for a disaster grant. All other PNPs must first apply to the Small Business Administration (SBA) for a disaster loan. If the PNP is declined for a SBA loan or the loan does not cover all eligible damages, the applicant may re-apply for FEMA assistance.

As soon as practicable after the declaration, the State, assisted by FEMA, conducts the Applicant Briefings for State, local and PNP officials to inform them of the assistance available and how to apply for it. A Request for Public Assistance must be filed with the State within 30 days after the area is designated eligible for assistance. Following the Applicant's Briefing, a Kickoff Meeting is conducted where damages will be discussed, needs assessed, and a plan of action put in place. A combined Federal/State/local team proceeds with Project Formulation, which is the process of documenting the eligible facility, the eligible work, and the eligible cost for fixing the damages to every public or PNP facility identified by State or local representatives. The team prepares a Project Worksheet (PW) for each project. Projects fall into the following categories:

- Category A: Debris removal
- Category B: Emergency protective measures
- Category C: Road systems and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational, and other

For insurable structures within special flood hazard areas (SFHA), primarily buildings, assistance from FEMA is reduced by the amount of insurance settlement that could have been obtained under a standard NFIP policy. For structures located outside of a SFHA, FEMA will reduce the amount of eligible assistance by any available insurance proceeds.

FEMA reviews and approves the PWs and obligates the Federal share of the costs (which cannot be less than 75 percent) to the State. The State then disburses funds to local applicants.

Projects falling below a certain threshold are considered 'small.' The threshold is adjusted annually for inflation. For fiscal year 2001, that threshold is \$50,600. For small projects, payment of the Federal share of the estimate is made upon approval of the project and no further accounting to FEMA is required. For large projects, payment is made on the basis of actual costs determined after the project is completed; although interim payments may be made as necessary. Once FEMA obligates funds to the State, further

management of the assistance, including disbursement to subgrantees is the responsibility of the State. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance and compliance with the law and regulations.

HAZARD MITIGATION

Hazard Mitigation refers to sustained measures enacted to reduce or eliminate long-term risk to people and property from natural hazards and their effects. In the long term, mitigation measures reduce personal loss, save lives, and reduce the cost to the nation of responding to and recovering from disasters.

Two sections of the Stafford Act, §404 and §406, can provide hazard mitigation funds when a Federal disaster has been declared. In each case, the Federal government can provide up to 75 percent of the cost, with some restrictions.

Through the Hazard Mitigation Grant Program (HMGP), authorized by §404 of the Act, communities can apply for mitigation funds through the State. The State, as grantee, is responsible for notifying potential applicants of the availability of funding, defining a project selection process, ranking and prioritizing projects for funding, and forwarding projects to FEMA for approval. The applicant, or subgrantee carries out approved projects. The State or local government must provide a 25 percent match, which can be fashioned from a combination of cash and in-kind sources. Federal funding from other sources cannot be used for the 25 percent non-federal share with one exception. Funding provided to States under the Community Development Block Grant program from the Department of Housing and Urban Development can be used for the non-federal share.

The amount of funding available for the HMGP under a disaster declaration is finite and is limited to 15 percent of FEMA's estimated total disaster costs for all other categories of assistance (less administrative costs). In addition, States may use a set-aside of up to five percent of the total HMGP funds available for mitigation measures at their discretion. To be eligible, a set-aside project must be identified in a State's hazard mitigation plan and fulfill the goal of the HMGP, this is, to reduce or prevent future damage to property or prevent loss of life or injury.

Eligible mitigation measures under the HMGP include acquisition or relocation of property located in high hazard areas; elevation of floodprone structures; seismic rehabilitation of existing structures; strengthening of existing structures against wildfire; dry

floodproofing activities that bring a structure into compliance with minimum NFIP requirements and State or local code. Up to seven percent of the HMGP funds may be used to develop State and/or local mitigation plans.

All HMGP projects, including set-aside projects, must comply with the National Environmental Policy Act and all relevant Executive Orders. HMGP grants cannot be given for acquisition, elevation, or construction purposes if the site is located in a designated SFHA and the community is not participating in the NFIP.

FEMA's primary emphasis for HMGP funds, where appropriate, is the acquisition and demolition, relocation, elevation, or floodproofing of flood damaged or floodprone properties (non-structural measures).

- **Acquisition and demolition:** Under this approach, the community purchases the flood-damaged property and demolishes the structure. The property owner uses the proceeds of the sale to purchase replacement housing on the open market. The local government assumes title to the acquired property and maintains the land as open space in perpetuity.
- **Relocation:** In some cases, it may be viable to physically move a structure to a new location. Relocated structures must be placed on a site located outside of the 100-year floodplain, outside of any regulatory erosion zones, and in conformance with any other applicable State or local land use regulations.
- **Elevation/Floodproofing:** Depending upon the nature of the flood threat, elevating a structure or incorporating other floodproofing techniques to meet NFIP criteria may be the most practical approach to flood damage reduction. Floodproofing techniques may be applied to commercial properties only; residential structures must be elevated. Communities can apply for funding to provide grants to property owners to cover the increased construction costs incurred in elevating or floodproofing the structure.

Funding under §406 that is used for the repair or replacement of damaged public facilities or infrastructure may be used to upgrade the facilities to meet current codes and standards. It is possible for mitigation measures to be eligible for funding under both the HMGP and §406 programs; however, if the proposed measure is funded through §406, the project is not eligible for funds under the HMGP as well.

— FEMA REGIONAL OFFICES —

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